

Application No. 09/887,144
Response to Office Communication on 09/13/2005

Attorney's Docket No. 0119-062

REMARKS

Claims 18-29 would be pending upon entry of this Amendment. Claim 17 has been canceled by the Office communication, and it has been assumed that claims 30-32 have also been canceled by the Office communication. Claim 18 would be amended by entry of this Amendment.

The Amendment filed on May 31, 2005, sought to cancel claims 17 and 30-32, to amend claim 18 by incorporating the features of its base independent claim 17 such that claim 18 would be in independent form, to amend claims 25-28 such that these claims would depend on claim 18, and to correct a cosmetic informality in claim 29.

The Office communication states on page 2 that the Amendment filed on May 31, 2005, has not been entered "because prosecution is closed and the proposed amendment was not suggested in an explicit statement by the Board". As noted in the Office communication, the Decision on Appeal sustained the rejection of claim 17 and reversed the rejections of claims 18-22. It is noted that the Decision on Appeal also sustained the rejections of claims 30-32 (and thus it has been assumed that these claims have been canceled by the Office communication).

Accordingly, the Office communication permits dependent claim 18 to be presented in independent form but asserts on page 2 that the dependencies of claims 25-28 cannot be changed, pointing to MPEP 1214.06.

It is respectfully submitted that the Office communication's reliance on MPEP 1214.06 overlooks the following provision of MPEP 1214.07, which addresses the situation where an amendment after a Board decision does not carry into effect a recommendation by the Board:

"If the amendment obviously places an application in condition for allowance, regardless of whether the amendment is filed with an RCE, the primary examiner should recommend that the amendment be entered, and with the concurrence of the supervisory patent examiner, the amendment will be entered." Underlining added.

Thus, MPEP 1214.07 encouraged entry of the Amendment filed on May 31, 2005, which sought to change the dependencies of claims 25-28 so that they would depend from claim 18. Because claim 18 is unquestionably allowable after the Decision

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on Appeal, there can be no doubt that the changed dependencies would "obviously" place the application in condition for allowance.

Entry of this Amendment would place claim 18 in independent form as permitted by the Office communication, and to avoid any question of non-compliance with the requirements of the Office communication, this Amendment has not expressly sought to amend claims 25-28 or claim 29. Nevertheless, because the changes to these claims are permitted by MPEP 1214.07 as they "obviously" place this application in condition for allowance, the Examiner is requested to enter the Amendment filed on May 31, 2005, or by Examiner's amendment to change claims 25-28 such that they allowably depend from allowable (allowed) claim 18.

If the Examiner has any questions, the undersigned attorney may be telephoned at the number given below.

Potomac Patent Group PLLC
P.O. Box 855
McLean, VA 22101
Tel: 919 677 9591

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Respectfully submitted,



Michael G. Savage
Registration No. 32,596